

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of:	)	Confirmation No.:	8316
	)		
Kazuhisa SUGIMURA et al	)	Art Unit:	1644
	)		
I.A. Filing Date: 08/28/2003	)	Examiner:	Z. S. Skelding
371(c) Date: February 28, 2005	)		
	)	July 27, 2007	
U.S. Appln. No.: 10/526,072	)		
	)	ATTY.'S DOCKET:	SUGIMURA=4
For: HUMAN ANTI-HUMAN	)		
INTERLEUKIN-6 ANTIBODY...	)		

**REPLY TO RESTRICTION AND ELECTION REQUIREMENTS**

Customer Service Window, Mail Stop Amendment  
Honorable Commissioner for Patents  
U.S. Patent and Trademark Office  
Randolph Building  
401 Dulany Street  
Alexandria, Virginia 22314

Sir:

Applicants are in receipt of the Office Action mailed June 29, 2007, setting a term for Reply of three months, the Office Action being entirely in the nature of restriction and election requirements based on alleged lack of unity of invention under the applicable PCT Rules 13.1 and 13.2. Applicants reply below.

**First, however, applicants request the PTO to acknowledge receipt of applicants' papers filed under §119.**

Restriction first has been required between what the PTO deems to be two (2) patentably distinct inventions. As

applicants must make an election even though the requirement is traversed, applicants hereby respectfully and provisionally elect Group II, presently claims 3-15 and 20-31, with traverse and without prejudice.

Briefly, the PTO takes the position that unity of invention is destroyed by Ito et al 2004/0071706. Applicants submit to the contrary that even if the broadest subject matter presently claimed by applicants were unpatentable over Ito<sup>1</sup>, this still would not destroy unity of invention, because there is unity between the two groups in the basis of the same or corresponding technical features more narrowly claimed.

Withdrawal of the requirement and examination of all the claims on the merits are therefore respectfully requested.

The PTO has also required applicants to elect a species of a single chain antibody either (A) not comprising a portion of the human antibody CH/CL chain or (B) comprising a portion of the human antibody CH/CL chain. As applicants must make an election even though the requirement is traversed, applicants hereby elect species A, namely a single chain antibody which does **not** comprise a portion of the human antibody CH/CL chain, with traverse and without prejudice.

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<sup>1</sup> Applicants are not admitting that Ito renders claim 1 unpatentable.

The claims which read on the elected species are claims 3-11 and 20-31 (claims 12-15 to the contrary recite a portion of the human antibody CH/CL chain).

Applicants traverse the requirement on the basis that they are entitled to have their generic claims examined and considered as a whole. Applicants do not deny that the species may be patentably distinct from one another. However, Applicants submit and maintain that the PTO has no authority for requiring an applicant to break apart a generic claim into individual claims, as that would in effect amount to a rejection. If applicants generic claims meet the requirements for patentability, including those of §§102, 103 and 112, then the generic claims should be allowed.

Withdrawal of the requirements and examination of all the claims on the merits are respectfully requested.

Respectfully submitted,

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